

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

ANN M. ACKAA and)	CIVIL ACTION
LARA OKESHOLA,)	
)	NO. 96-8262
Plaintiffs)	
)	
vs.)	
)	
TOMMY HILFIGER CO.,)	
NELSON ORTIZ and)	
IAN (sic) MARTINEZ,)	
)	
Defendants)	

TROUTMAN, S.J.

M E M O R A N D U M

Plaintiffs in the above-captioned action allege that on January 21, 1995, they were shopping in the Tommy Hilfiger store in the Reading Outlet Center when defendants Nelson Ortiz and Ivan Martinez, security guards employed by defendant Tommy Hilfiger Co., followed them around the store and later accosted them and falsely accused them of shoplifting. Plaintiffs further allege that they were singled out and subjected to such treatment solely because of their race.

Plaintiffs originally asserted claims under 42 U.S.C. §2000a(b), for discrimination in a place of public accommodation, as well as under 42 U.S.C. §1981, for racial discrimination in the making or enforcing of contracts, and under state law for assault and battery. By order entered on April 18, 1997, this Court dismissed plaintiffs' public accommodation claims.

Thereafter, an agreed scheduling order was entered which provided for a discovery period ending on October 3, 1997.

In September, 1997, as permitted by the scheduling order, defendants filed an amended complaint, which they subsequently withdrew, and for which they then substituted a second amended complaint, in which they sought to add two new plaintiffs and three new theories of liability against defendants arising from the same incident. In December, 1997, in ruling on defendants' motion to dismiss the second amended complaint, this Court permitted both plaintiffs to proceed with their newly asserted negligence claims, and permitted plaintiff Ann Ackaa to pursue her claim under the Pennsylvania Human Relations Act, but dismissed the second amended complaint in all other respects.

Presently before the Court is defendants' motion for summary judgment with respect to all remaining claims. The motion may be granted only to the extent that there are no genuine issues of material fact in dispute and defendants are entitled to judgment as a matter of law. Fed.R.Civ.P 56(c).

When considering a motion for summary judgment, the Court is not permitted to weigh the evidence or to make determinations as to the credibility thereof. Our initial function, with respect to the facts, is to determine whether there are any disputed issues. If there are disputed issues of fact, we are then required to determine whether the issues in dispute are both genuine and material, i.e., involve facts upon which a reasonable factfinder could base a verdict for the non-

moving party and facts which are essential to establishing the claim. Anderson v. Liberty Lobby, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed. 2d 202 (1986).

In order to obtain a summary judgment, the proponent of the motion has the burden of identifying, from the sources enumerated in Rule 56, evidence which demonstrates the absence of a genuine issue of material fact. When confronted by a properly supported motion for summary judgment, the opposing party is required to produce, from the same sources, some contrary evidence which could support a favorable verdict. Thus,

[T]he mere existence of some evidence in support of the non-moving party will not be sufficient to support a denial of a motion for summary judgment; there must be enough evidence to enable a jury to reasonably find for the non-moving party on the issue.

Petrucelli v. Bohringer and Ratzinger, 46 F.3d 1298, 1308 (3rd Cir. 1995).

Additionally, where the non-movant, usually the plaintiff, bears the burden of proof on the issue which is the subject of the summary judgment motion and is confronted by the defendant's argument that the facts established through the discovery process do not support the claim, that party must identify evidence of record sufficient to establish every element essential to the claim. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed. 2d 265 (1986). Equimark Commercial Finance Co. v. C.I.T. Financial Services Corp., 812 F.2d 141 (3d Cir. 1987).

To defeat summary judgment, therefore, the party opposing the motion may not rest upon the allegations of the complaint, or upon mere denials of the facts identified by the movant as supportive of its position, or upon the vague and amorphous argument that the record somewhere contains facts sufficient to support its claims. Childers v. Joseph, 842 F.2d 689 (3d Cir. 1987). Rather, the party resisting the motion for summary judgment is required to identify, specifically, the evidence of record which supports the claim and upon which a verdict in its favor may be based. Id.

Finally, the Court's consideration of the facts must be in the light most favorable to the party opposing summary judgment and all reasonable inferences from the facts must be drawn in favor of that party as well. Tigg Corp. v. Dow Corning Corp, 822 F.2d 358 (3d Cir. 1987).

Defendants have asserted two grounds for their summary judgment motion. They contend, first, that they are immune from liability for plaintiffs' negligence and assault and battery claims under a provision of Pennsylvania's Retail Theft Act, 18 Pa. Cons. Stat. Ann. §3929(d), in that the evidence establishes that defendants' conduct, aimed at ascertaining whether plaintiffs had shoplifted merchandise, was supported by probable cause and was reasonable under the circumstances. Second, defendants assert that there is insufficient evidence of a prima facie case of racial discrimination to permit plaintiffs' claims under 42 U.S.C. §1981 and Ackaa's PHRA claim to proceed.

Upon careful consideration of the record produced in support of and in opposition to the pending motion for summary judgment in light of the foregoing general legal standards and in light of the legal standards applicable to the specific claims remaining in this action, we conclude that plaintiffs have produced sufficient evidence that there are genuine and material issues of fact dispute to successfully defeat defendants' summary judgment motion with respect to all but the §1981 claims.

Plaintiffs' §1981 Claim

In order to state a cognizable claim under 42 U.S.C. §1981, which protects, inter alia., the right to make and enforce contracts, plaintiffs are required to allege (1) that they are members of a racial minority; (2) that defendants intentionally discriminated against them on the basis of their race; (3) that the discrimination was directed toward one or more of the activities protected by the statute.¹ Main v. Donaldson, Lufkin & Jenrette Securities, 7 F.3d 1085 (2nd Cir. 1993); Thomas v. St. Luke's Health Systems, Inc., 869 F.Supp. 1413 (N.D. Iowa 1994). Since §1981 was amended by Title I of the Civil Rights Act of 1991, §101, 42 U.S.C.A. §1981(b), (West 1994), contract rights

1. In addition to granting all persons in the United States the right to make and enforce contracts, §1981 provides that all persons have the right to sue, to be parties, to give evidence, to have the full benefit of all laws and proceedings for the security of persons and property as white citizens, and to be subject to the same punishment, pains, penalties, taxes, licenses and exactions. 42 U.S.C.A. §1981(a) (West 1994).

protected by §1981 encompass the performance, modification, termination, and, generally, "enjoyment of all benefits, privileges, terms and conditions of the contractual relationship." In addition, the rights enumerated in the statute are clearly and specifically protected against encroachment by private, as well as state, action. §1981(c).

For summary judgment purposes, §1981 claims are analyzed under the same burden-shifting standards utilized in Title VII discrimination cases. Lewis v. J.C. Penney, Co., Inc., 948 F.Supp. 367 (D. Del. 1996); Hampton v. Dillard Department Stores, Inc., No. Civ. A. 97-2182-KHV, 1997 WL 765779 (D. Kan. Nov. 25, 1997); Harrison v. Denny's Restaurant, Inc., No. C-96-0343, 1997 WL 227963 (N.D. Cal. April 24, 1997). Plaintiffs, therefore, are first required to establish a prima facie case by demonstrating (1) that they are members of a racial minority; (2) that defendants intended to discriminate against them on that basis; (3) that defendants' racially discriminatory conduct abridged contract or other rights enumerated in §1981(a). Lewis. If plaintiffs succeed in establishing their prima facie case, defendants are required to assert some legitimate, nondiscriminatory basis for their conduct. Id. Plaintiffs must then bear their ultimate burden of coming forward with evidence to prove that defendants' proffered reasons were really a pretext for discrimination. Id.

Since plaintiffs are of African origin, there is no dispute in this action that they can prove that they are members

of a racial/ethnic minority, the first element of the prima facie case.

To establish the second element, plaintiffs must point to facts of record which, if proved, would "establish that defendants' actions were racially motivated and intentionally discriminatory," or, at least, "support an inference that defendants intentionally and purposefully discriminated" against them on the basis of their race. Brown v. City of Oneonta, 858 F.Supp. 340, 344 (N.D.N.Y. 1994); Imagineering v. Kiewit Pacific Co., 976 F.2d 1303, 1313 (9th Cir. 1992). Here, plaintiffs note that they and their two companions were the only black customers in the Tommy Hilfiger store and contend that the security guards paid particularly close attention to them for that reason alone. One of the plaintiffs and a friend testified at their depositions that they noticed that two men always seemed to be near them while they were shopping. (See, Defendant's Motion for Summary Judgment, (Doc. #20), Exhibit A at 68--70; Exh. C at 56--60). Plaintiff Lara Okeshola, as well as Titilayo Akinlaja and Margaret Fadoju, the other women who accompanied plaintiffs on their shopping trip, particularly noted defendant Martinez's apparent interest in Okeshola, since he always seemed to be close to her while she was shopping, approaching her at one point to solicit her opinion on a shirt before she ever approached the sock rack. (Id., Exh. A at 58, 59, 123--125; Exh. C at 56; Exh. D at 83). Moreover, plaintiffs submitted the affidavit of Joyce Graves, a former Hilfiger management employee, identified by

Martinez as a friend who encouraged him to apply for a job as a security guard. Ms. Graves, however, stated in her affidavit that Martinez regularly used an offensive racial epithet in conversation and targeted black customers as the object of "pranks" he perpetrated while on duty as a security guard. Ms. Graves further stated that both Martinez and defendant Ortiz follow black customers in the Hilfiger store, prompting numerous complaints to management by such customers. (See, Plaintiff's Response to Defendants' Motion for Summary Judgment, (Doc. #24), Exh. I, ¶¶5, 6).

In addition, although the defendant security guards testified that they had ample reason to focus their attention on plaintiffs, based upon their independent observations of plaintiffs' conduct while browsing at the socks display, defendants do not deny that they scrutinized plaintiffs closely while they were shopping. (Doc. #20, Exh. E at 64, 65, 69; Exh. F at 43).

Finally, plaintiffs and their friends testified that when they sought an apology from the store for the treatment they had received at the hands of the security guards before leaving, the guards insisted that they leave the store. (Id., Exh. B at 45; Exh. C at 92, 97--99; Exh. D at 52). Later, one of the defendant guards, who purportedly attempted to apologize, treated the request for an apology, and, indeed, the entire incident as a joke. (Id., Exh. B at 47, 50; Exh. C at 101; Exh. D at 51).

The evidence cited by plaintiffs clearly raises issues of material fact concerning the motivation of the security guards in closely observing plaintiffs in the first instance, as well as their motivation in questioning plaintiffs about taking socks and in later calling the police. There is testimony from which it could be inferred that, as the only black customers in the store, they would have been targeted for both close scrutiny and some form of contact by the defendant security guards regardless of any purportedly suspicious conduct on their part. There is, e.g., testimony, albeit disputed, that the security guards followed at least one of the plaintiffs before she began looking at the socks, and that one of the defendant guards apparently attempted to engage her in conversation as if they were simply fellow shoppers. Moreover, it is undisputed that plaintiffs were stopped and questioned about concealing and taking socks from the store, which led to a confrontation that ultimately resulted in a call to the city police and a request, instigated by the security guards, that plaintiffs and their friends leave the store and not return under threat of arrest for trespass. (See, Doc. #24, Exh. L at 30, 31, 40; Exh. C, Statement of Keli Nelson, attached to Answer of Tommy Hilfiger Co. to Plaintiffs' Interrogatories). Taken in the light most favorable to plaintiffs, the evidence cited could support the inference that in conformity with their common practice of singling out black customers for close observation and mild harassment, the security guards targeted plaintiffs because they were the only black customers in the

store, and that the situation unexpectedly escalated when the plaintiffs and their friends reacted strongly to the situation, prompting defendants' insistence that the plaintiffs leave the store and their call to the police. In other words, a jury could find that the entire incident was set in motion because of the security guards' racially biased conduct, which, although known to Tommy Hilfiger management as a result of previous complaints from black customers, was apparently unrestrained, if not actively condoned.

It is likewise true, of course, that a jury could reject the testimony of plaintiffs and their friends, and find, instead, that the security guards' conduct was prompted not by plaintiffs' race but by the reasonable, though mistaken, belief that plaintiffs had taken merchandise from the store, and that the situation turned confrontational because of plaintiffs' overreaction. The widely divergent accounts of what occurred, however, clearly preclude summary judgment on the issue whether race discrimination was the underlying cause of the situation. Consequently, we conclude that because there are material issues of fact in dispute with respect to whether racial discrimination occurred, plaintiffs have met their burden of producing sufficient evidence to demonstrate that they can establish the second element of a §1981 prima facie case.

To complete their prima facie case, plaintiffs must likewise establish that defendants' discriminatory actions affected one of the rights protected by §1981. In this case,

plaintiffs allege that their right to make and enforce contracts was abridged. Specifically, plaintiffs contend that they were denied the right to enjoy all the terms, benefits and privileges of an implied contract between a retail establishment and its customers, i.e., to browse, examine and purchase merchandise without harassment, to leave the store without being subjected to accusations of theft, and to reenter the store at will for additional shopping, return or exchange of merchandise. Reduced to its essence, plaintiffs' §1981 contract claim, as articulated in their brief in opposition to defendants' motion for summary judgment, amounts to breach of a presumed right to be free of race discrimination while accepting a store's invitation to shop.

Similar theories of interference with enjoyment of all terms, privileges and conditions of the presumed contractual relationship between retail establishments and shoppers by baseless accusations of shoplifting or close observation by store employees have, however, been consistently rejected as insufficient to satisfy the third element of a prima facie case under §1981. See, e.g., Morris v. Office Max, Inc., 89 F.3d 411 (7th Cir. 1996); Lewis v. J.C. Penney; Hampton v. Dillard Department Stores, Inc. In the context of a contract discrimination claim arising from a retail transaction, the courts have universally required that in order to successfully establish the third element of a prima facie case, i.e., a deprivation of rights secured by §1981, plaintiffs must produce evidence of something more than the same type of racially based,

discriminatory conduct sufficient to support the second element of a §1981 prima facie case.

In Washington v. Duty free Shoppers, Ltd., 710 F.Supp. 1288 (N.D. Cal. 1988), e.g., plaintiffs presented evidence that black shoppers were consistently prevented from entering the store without producing passports or airline tickets, while white shoppers were regularly admitted without proof that they were traveling overseas. In Henderson v. Jewel Food Stores, Inc., No. 96 C 3666, 1996 WL 617165 (N.D. Ill. Oct. 23, 1996), plaintiff was placed under arrest for shoplifting before he had the opportunity to pay for the items he was carrying to the cash register. As that court explained, to make out the third element of a prima facie case of retail contract discrimination, "[A] §1981 claim must allege that the plaintiff was actually prevented, not merely deterred, from making a purchase or receiving service after attempting to do so." Id. at *4.

In light of the foregoing legal standards for analyzing claims of interference with rights secured by §1981, we here conclude that plaintiffs have failed, as a matter of law, to demonstrate that they were denied the enjoyment of all rights, privileges, terms and conditions of a purported contractual relationship with defendant Tommy Hilfiger Co. The evidentiary record establishes that their transactions in the store for that day were completed. Plaintiffs did not express any intention to shop in the store again that day, either before or after they were ejected by a City of Reading police officer at the behest of

the security guards. Moreover, there is no evidence that plaintiffs wished to return any of the merchandise previously purchased and were prevented from entering the store to do so by the threat of arrest. Consequently, there is no evidence to support an inference that they were denied entry or service on that day or any other. At most, therefore, plaintiffs might establish that future and potential, rather than present, opportunities to engage in contractual relations with the defendant store were implicated by the incident underlying their §1981 claim.

Thus, we ultimately conclude that defendants are entitled to summary judgment on plaintiffs' §1981 claim. Since plaintiffs have not presented evidence of a legally sufficient abridgment of contract rights, they cannot prove a prima facie case in accordance with the legal standards applicable to §1981 claims.

Plaintiff Ackaa's PHRA Claim

As defendants acknowledge, a PHRA claim is likewise evaluated in accordance with the analytical framework used for federal Title VII cases. Allegheny Housing Rehabilitation Corp. v. Pennsylvania Human Relations Commission, 532 A.2d 315 (Pa. 1987). Thus, plaintiff Ackaa is first required to establish a prima facie case of race discrimination, and if successful in doing so, the burden shifts to defendants to articulate a legitimate, nondiscriminatory reason for the allegedly biased

conduct. If defendants meet their burden of production, plaintiff must adduce evidence, sufficient to survive summary judgment, which demonstrates that defendants' purported reason is unworthy of belief, thereby raising an inference that race discrimination was the true motive for the conduct of which she complains. In the alternative, plaintiff can produce more direct evidence that defendants' proffered reason was merely a pretext to disguise the racial discrimination which actually motivated them. In the end, however, plaintiff must bear the ultimate burden of proving, by a preponderance of the evidence, that defendants intentionally discriminated against her on the basis of her race.

Since two of the essential elements of a PHRA prima facie case for disparate treatment, i.e., membership in a racial minority and racially based, discriminatory conduct, are identical to a §1981 prima facie case, we conclude without further discussion that plaintiff has successfully established those elements of her PHRA case. We likewise conclude that plaintiff has adduced sufficient evidence that shoppers in the Tommy Hilfiger store who were not members of the protected class were treated more favorably. There is no dispute in the record that plaintiff and her companions were the only black customers in the store and that no other shoppers were accused of shoplifting or subjected to a search at the time the incident in this case occurred. Consequently, plaintiff has satisfied her initial burden of producing evidence sufficient to survive

summary judgment that supports a prima facie case of race discrimination under the PHRA.

Defendants have also offered legitimate, nondiscriminatory reasons for closely scrutinizing plaintiff while she shopped, for asking her whether she had taken merchandise from the store, and for ultimately asking her to leave and not return. Defendants contend that one of the security guards observed plaintiff putting a pair of socks in her coat, and thereafter watched her more closely than other shoppers, both to determine whether she might put the socks back on the rack before she left the store and whether she might conceal other articles. Moreover, defendant Nelson Ortiz testified that he inquired of a clerk whether plaintiff had paid for the socks prior to approaching her outside the store. (Doc. #20, Exh. E at 71). Defendants suggest, therefore, that they attempted to be certain that any shoplifting accusation was well-founded. Finally, testimony from Hilfiger employees, including the defendant security guards support an inference that plaintiff was ejected from the store because she was creating a disturbance. Thus, defendants contend that their conduct was based upon reasonable grounds to believe that plaintiff had concealed and taken merchandise and upon the need to restore order by removing a disruptive person.

Defendants further argue that plaintiff has offered no evidence that raises a material issue of fact with respect to whether their articulated reasons for their conduct were

pretextual. In fact, defendants appear to ask the Court to view conflicting evidence in the light most favorable to them, or to completely disregard plaintiff's contrary evidence.

In the context of plaintiff Ackaa's PHRA claim, however, much of the same evidence of discriminatory conduct that supported the prima facie case can likewise serve to discredit the legitimate, nondiscriminatory reasons proffered by defendants to justify their actions. As noted previously, the record creates considerable doubt about whether the individual defendants initially targeted plaintiffs due to legitimate security concerns or whether they were targeted for scrutiny because of their color. Although the testimony of the security guard who observed Ackaa appears to indicate that he is still convinced that he saw plaintiff conceal socks in her clothing, no socks were discovered on her person. Moreover, both guards described almost identical concealing motions which aroused their suspicion, yet the movements they allegedly saw were attributed to two different women, who were apparently not at the same display rack at the same time. Defendants have cited no other factors in plaintiffs' conduct which provides a basis to target them for scrutiny as likely shoplifters. In addition, as noted, there is disputed evidence concerning whether the security guards followed and observed plaintiffs before they even began looking at the socks. Finally, the testimony of the store employees and plaintiffs and their friends is diametrically opposed with respect to whether plaintiff Ackaa was so loud or disruptive as

to justify a call for police assistance, followed by the extraordinary step of ejecting Ackaa and her companions from the store, and ordering them, under threat of arrest, not to return.

In short, based on the evidentiary record, a reasonable jury could conclude that the security guards' contention that plaintiff Ackaa made a suspicious movement is merely a post haec rationalization for labeling plaintiff a potential shoplifter, for subjecting her to exceptional scrutiny and to an unfounded accusation of shoplifting, all of which were actually based primarily, if not solely, upon her race. Similarly, depending upon credibility determinations, a jury might conclude that the original discrimination continued when the security guards, angered by plaintiff's insistence upon a sincere apology and concerned about possible repercussions to themselves from plaintiff's complaints, enlisted the help of the police to eject plaintiff Ackaa and her friends from the store.

There is, therefore, sufficient doubt about why and how the incident underlying this action occurred to preclude summary judgment on plaintiff Ackaa's PHRA claim.

Immunity under the Retail Theft Act

Essentially relying upon the same argument offered to support summary judgment on the race discrimination issue, defendants contend that they are immune from civil or criminal liability on plaintiffs' claims by virtue of the Retail Theft Act, 18 Pa. Cons. Stat. Ann. §3929(d). The statute protects a

merchant from liability if there was probable cause for its agents to believe that the accused was stealing merchandise from the store. Pinkett v. Super Fresh Markets, Inc., Civ. A. No. 87-4573, 1988 WL 30952 (E.D. Pa. March 28, 1988). Probable cause, in this context, "means that the person detaining or confining the suspect believes...and a reasonable person under the same circumstances, would also have believed...that a theft of merchandise from the store had been committed (or was being committed) and that the person detained or confined was guilty of that theft of merchandise from the store." Id. at *6.

Defendants' only evidence of probable cause is the testimony of both security guards concerning the virtually identical concealing movements that each security guard independently observed with respect to one, but not both, of the plaintiffs. Defendants are correct that if such testimony is accepted as true, there was probable cause to believe a theft had occurred and defendants would be entitled to claim the immunity protection of the Retail Theft Act. In light of the vigorous disputes concerning virtually all of the essential facts of this matter, however, the immunity issue cannot be decided as a matter of law. Defendants obviously have to articulate some reasonable basis for their accusations against the plaintiffs other than their race, and have done so. Nevertheless, as noted, they reported no other basis for suspicion of the plaintiffs. Plaintiffs also testified that they noticed the guards near them prior to their looking at the socks. Moreover, as plaintiffs

suggest, the fact that each plaintiff was accused of taking only one pair of socks, while plaintiffs and their friends collectively purchased several hundred dollars worth of merchandise, tends to raise questions concerning the guards' credibility when coupled with the exceptional consistency of the suspicious movements they independently observed, but each with respect to a different person.

Because we conclude that the record produced in support of and in opposition to defendants' motion, when viewed in the light most favorable to plaintiffs, demonstrates significant disputes concerning material facts underlying the probable cause determination, the motion for summary judgment will be denied with respect to the issue of defendants' immunity from liability under the Retail Theft Act.

Conclusion

Review of the record reveals significant differences in plaintiffs' and defendants' accounts of the incident from which this action arose. Moreover, such differences, in most instances, involve facts which are relevant and material to defendants' liability for race discrimination and to whether defendants are entitled to claim the immunity afforded by Pennsylvania's Retail Theft Act.

On the other hand, however, plaintiffs failed to establish that the record supports a legally cognizable

interference with rights protected by §1981, even if all disputed facts are resolved entirely in their favor.

Consequently, in the order which follows, defendants' motion for summary judgment will be granted with respect to plaintiffs' federal civil rights claim under 42 U.S.C. §1981, and will be denied in all other respects.

UNITED STATES DISTRICT COURT
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Defendants)	

TROUTMAN, S.J.

O R D E R

And now, this day of March, 1998, upon consideration of Defendants' Motion for Summary Judgment, (Doc. #20), and plaintiffs' response thereto, **IT IS HEREBY ORDERED** that the motion is **GRANTED** with respect to plaintiffs' claims based upon 42 U.S.C. §1981, only.

IT IS FURTHER ORDERED, therefore, that Counts I and III of the Second Amended Complaint are **DISMISSED with prejudice**.

IT IS FURTHER ORDERED that in all other respects, the motion for summary judgment is **DENIED**.

IT IS FURTHER ORDERED that a PRETRIAL/SETTLEMENT conference, pursuant to Fed. R. Civ. P. 16(c) will be held in the above-captioned case on

Thursday, April 30, 1998 at 11:00 A.M.

in Chambers 4th Floor, The Madison Building, 400 Washington Street, Reading, Pennsylvania, 19601.

Pursuant to Fed. R. Civ. P. 16(c) and Chapters VIII and IX of the Civil Justice Reform Plan, trial counsel and all principals necessary for full and immediate authority to negotiate in good faith and to ultimately settle this action at that time are required to be present, in person, at said conference.

Approximately one week prior to the scheduled settlement conference, the parties shall prepare and submit directly to the Court confidential written settlement position reports. THIS REPORT IS FOR THE COURT ONLY; IT IS NOT TO BE SERVED ON THE OPPOSING PARTY.

S.J.